IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1175 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKORBHAI AMBALAL CHAUHAN & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
Mr. Yatin Oza,ld.Sr.Counsel for Mr. BP GUPTA for Applicants
Mr.H.L.Jani, APP for Respondent(s) : 1,
MR MM TIRMIZI for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 09/03/2006

CAV JUDGMENT

1. Heard learned Sr.Counsel Mr. Yatin Oza for Mr. B.P.Gupta, learned Advocate for the petitioner, Mr.H.L.Jani, learned A.P.P. for the respondent no.1-State

and learned Advocate Mr. Tirmizi for the respondent no.2.

2. Rule. Mr.H.L.Jani, learned A.P.P. and Mr.N.M.Tirmizi waives service of rule on behalf of the respondent nos.1 and 2 respectively.

2.1 With the consent of the learned Advocates for the respective parties, the matter is finally heard.

3. The petitioners have filed the present petition under Section 482 of the Criminal Procedure Code with a prayer to quash and set aside the complaint being C.R.No.I 25/06 lodged at Pani Gate Police Station, Vadodara on 20-1-2006 produced at Annexure “A” to the petition.

4. Brief facts as are necessary for disposal of the present petition are that the complainant-Taraben H.Pathak aged 85 years had sold the property bearing revenue survey no.280, block no.249 admeasuring Hectar 0, Guntha 66, Are 77 of village Kalali to one Dipak Bachhubhai Trivedi through the present petitioners by registered sale deed on 21-11-2005. It is alleged in the complaint that the present petitioners accompanied by another accused approached her and told her that for making entry in the abstract of 7/12 her signature was required in the property card and for that purpose, in good faith, she had put her signatures on certain papers.

It is alleged that these papers were to be used to create Banakath in favour of the other accused and also for getting prepared voucher receipts showing receipt of money by the complainant-Taraben as she was an illiterate and quite old lady. The other accused, namely, Ravindra alias Mako Shankarbhai Patel filed a suit before the City Civil Court, Ahmedabad, for specific performance of the agreement to sell against the complainant-Taraben and it is only on receipt of the notice with some papers from the Court that Taraben realised that offence has been committed by the present petitioners and other accused. Thereupon, the complainant-Taraben lodged complaint against the present petitioners and other accused for offences punishable under Sections 406, 420, 467, 471 and 114 of the Indian Penal Code, giving rise to the filing of the present petition.

5. Learned Senior Counsel Mr. Y.N.Oza for Mr. B.P.Gupta has vehemently argued that the alleged transaction is purely civil in nature as, according to him, reading the complaint, no offence is made out against the present petitioners. He further argued that the voucher receipts which were produced alongwith the petition at Annexure “C” clearly reveals that in the presence of Ramaben daughter of complainant the amount

was received by the complainant. Moreover, it was his say that complainant had specifically admitted to have put her thumb impression on the voucher receipts produced at Annexure “C” to the petition as also the thumb impression on the document of agreement to sell at Annexure “B”. According to the learned Counsel, therefore, presumption can be drawn against the complainant of having received the amount and having entered into the agreement to sell and as such, no offence is made out against the present petitioners. He finally argued that civil suit is also pending, and hence, only civil court can decide this issue at the trial. Based on these submissions and the facts of the case, Mr.Gupta has strongly urged before the Court that the complaint is required to be quashed and set aside on all counts.

6. Learned A.P.P. Mr.Jani on the other hand submitted that from the complaint and from the investigation papers , prima facie, it is establshed that offence is made out as alleged in the complaint. According to him investigation is in progress and is at the crucial stage but as accused are not available despite sincere efforts by the police officers, and therefore, at this stage, the complaint should not be quashed. The learned A.P.P. has further submitted that it is only after the filing of the

suit that the complainant had come to know that her thumb impressions were obtained by the present accused on blank papers with a view to create false document of agreement to sell and to prepare concocted voucher receipts. According to the learned A.P.P., the complainant has a right to lodge complaint when the commission of offence by the present petitioners came to her knowledge, and therefore also the complaint should not be quashed.

7. Having carefully scrutinized the original police papers as also the complaint, prima facie, it is found that there is substance in the allegation made in the complaint. I have also examined the voucher receipts as also the agreement to sell and I am of the opinion that some investigation as to when the voucher receipts came to be prepared and the agreement to sell was executed is required, more so when the agreement to sell is not a registered one and as per law registration of document to sell is mandatory. Not only that the accused is absconding and is not available for investigation, and the Court would not exercise power in favour of a person who does not come with clean hands. That civil suit is pending between the parties is also no ground for quashing of a complaint. Thus, after examining the

controversy raised before the Court in the light of the statutory provisions and the well settled propositions of law, this Court is of the view that a cognizable offence of obtaining the thumb impressions on blank papers fraudulently is disclosed justifying the necessity of investigation into the matter, especially when the complainant in the complaint had explained the circumstances under which the signatures were put on the blanker papers by her, and therefore, the complaint cannot be quashed at the hands of this Court.

8. In support of their submissions, the learned Counsel for the petitioner has drawn my attention to the following authorities:

1. Soni Vallabhdas Liladhar and another v. The Assistant Collector of Customs, Jamnagar.(AIR 1965 SC 481.

2. Narbada Devi Gupta v. Birendrakumar Jatswal and anr. (AIR 2004 SC 175).

3. Zandu Pharmaceutical Works Ltd and Ors. v. Mohd. Sharaful Haque and Anr.((2005) 1 SCC 122).

8.1 However, since the disputes involved in the said authorities are purely of civil nature, the same cannot be made applicable to the facts of the present case.

9. I am fortified in my view by the decision rendered in the case of **Lalmuni Devi v. State of Bihar and Ors (2001 AIR SCW 2504)** wherein at paragraph 8 of the

judgment, it has been clearly observed that merely because on facts civil claim is also maintainable, it does not mean that criminal complaint cannot be maintained. Reference in this connection may also be had to the decision rendered in the case of **Vitoori Pradeep Kumar v. Kaisula Dharmaiah and Others ((2002) 9 SCC 581).**

10. Considering all these aspects and having regard to the entire facts and circumstances of the case, there being no substance in this petition, the same fails and is dismissed. Rule is discharged. It is clarified that the observations made in this order be treated as tentative in nature and since investigation is at large and as the civil proceedings between the parties are pending, the observations made should not come in the way of either party and it is also clarified that the observations made are only for the purpose of deciding this petition.

(M.D.Shah,J.)

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